



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/005,804      | 12/03/2001  | Peter Van Voris      | 47309-00031USP1     | 9427             |

30223 7590 08/17/2004  
JENKENS & GILCHRIST, P.C.  
225 WEST WASHINGTON  
SUITE 2600  
CHICAGO, IL 60606

|          |
|----------|
| EXAMINER |
|----------|

LEVY, NEIL S

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1616

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/005,804             | VORIS ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Neil Levy              | 1616                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 2/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-9, 12, 15, 18, 19, 26, 34-39, 43, 44 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9, 12, 13, 15-18, 34-39, 43 & 44 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☒ Claim(s) 1, 2, 4-9, 12, 13, 15-18, 19, 26, 34-39, 43 & 44 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1616

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Please ask for corrected Bibdata, showing Van Voris, from Washington; not Voris from Virginia.

Claim 19 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9.

Claims 17 and 7 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. 17 repeats now amended one; 7 repeats deltamethin.

Claims 1, 4, 5, 9, 12, 13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crook et al 6224957.

The rejection of record is maintained.

It is the barrier, not future intended use, that is accorded patentable consideration-absent in consideration of Crook. Crook has the instant LDPE matrix, a pesticide, and the long term use barrier, thus obvious to provide release rate as desired, depending upon desired life of barrier, with substantially no pesticide release (col.3, top) the instant less than 0.4mg.

Claims 1, 2, 4-9, 12, 13, 15-18, 34-39, 43, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vonkohorn in view of Martin et al – AU13886195, Dohre 4680328 and Van Voris et al 5801194.

Von Kohorn shows multilayered polymeric pesticide delivery systems, with pesticide and solid carrier (example 2) and including layers to control pesticide migration, and layers (15, fig.1) to block completely or control pesticide migration (col.6, lines 11-21). For instance, the polymeric laminates can permit of no more than 0.01 microgram/square centimeter of DDT (col.12, lines 50-55). Pyrethrins (pyrethrum, allethrin-table, col.22) can be used. Rate control means include plasticizer use, polymer material of flexible or rigid nature, thickness (col.24, line 44-line 20, col.25) and number of layers (col.6, lines 55-65) although the active migrates through the polymers, it is not coextruded in the formation of the film.

Martinet-also provides polymeric films, for termite control, of polyethylene, with incorporated termiticides, pyrethrin (p.9) permethrin. The pesticide is impregnated or incorporated during production of the polyolefin polymer, which is extruded-thus, the binding in the polymer matrix as instantly claimed. Martinet shows overlapping layers are applied (p.6, lines 15-22), and shaped over structures.

Dohre also provides barrier films, showing (col.3, top) LLDPE with carbon black and insecticide (col.4, lines 23-54) up to 8% (col.4, last paragraph) mixed with the carrier and extruded (col.5, lines 18-30) to provide long term, 42 year, retention (table II).

Van Voris teaches the instant polymer (col.5) last paragraph chosen for the desired pesticide release rate, inclusive of Lamdcyhalsthin (col.5, lines 33-42), with a carbon black carrier (last paragraph, col.6) at the instant ratios (col.7,

Art Unit: 1616

lines 35-53) to provide desired release rates over at least 5 years. The instant release rates are shown in table 3.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a insecticidal barrier, to use one of Von Kohorn, suitable for use in termite control as martinet demonstrates, using the same actives and polymers. Dohrer and Van Voris show the same polymer, active and carriers to be compatible and modifiable to provide the desired rate of pesticide release, even as low as the instant invention, thereby providing years of efficacy.

Claims 1, 4-9, 15-18, 34-39, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cataldo et al 5856271 in view of Burris 2899771.

See col.7, Table E1d: the instant pesticide in 6DPE matrix provides release rates of < 0.1. carbon black was carrier. However, a laminate is absent.

Burris shows it (fig.2) for termite control. Burris does not specify lifetime or release rate of pesticide.

Thus, the artisan would find it obvious to prepare particular ingredient combinations, and sizes, concentration and ratios of ingredients, depending upon the length of time for desired protection and ease of handling, for example.

Claims 1, 4-9, 12, 13, 15-18, 34-39, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Voris et al –6099850, Van Voris et al6319511.

'609: the polymeric insecticidal barrier is shown (col.7) with the instant pesticide, carrier and polymer (col.8, line 50+) effective for years, with instant release rates (table 1).

'631: see "termites" col.18; see table E1-1 < 0.1 release rate. Laminates are at col.7, bottom. Fungicides are at col.5, lines 44-47.

Applicant's arguments filed 7/02/04 have been fully considered but they are not persuasive. Applicants amendments and arguments, to extent persuasive, have resulted in withdrawal of rejection, but reconsideration and updated search results in continued rejection. The matrix argued for, is in Von Kohorn, the active migrates through the polymer likewise, application of a plastisol by Von Kohorn is seen as a matrix within which is pesticide evenly distributed on a solid carrier shown at example 2. The martinet patent also is seen as providing the matrix as instantly claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday through Friday from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd

August 9, 2004

A handwritten signature in black ink, appearing to read "Neil S. Levy".

NEIL S. LEVY  
PRIMARY EXAMINER